SAW SENG KEE v. DIRECTOR OF LANDS & MINES, PENANG & ORS.

TEOH HAN CHE v. DIRECTOR OF LANDS & MINES, PENANG & ORS.

[O.C.J. (Edgar Joseph Jr. J.) February 6 & 7, 1986]

[Penang – Civil Suits Nos. 1508 & 1509 of 1985]

Administrative Law – Injunction against Public Authority from demolishing premises – Whether injunction should be issued – Public Authorities Protection Act, 1948, s.2.

Practice and Procedure – Interlocutory injunction – Applications disallowed when damages possible and on balance of convenience.

In these two cases, the plaintiffs made two separate applications for interlocutory injunctions against the third defendant, the Urban Development Authority, restraining it or its servants or agents or otherwise howsoever from pulling down and demolishing certain premises in Penang. The principal issue for decision in both these applications is whether the third defendant should be restrained by interlocutory injunction from exercising its statutory powers.

Held, dismissing the applications: (1) it is settled law that a Public Authority – and the Urban Development Authority is such a body – should not be restrained by interlocutory injunction from exercising its statutory powers unless the plaintiff has shown a real prospect of success in his claim for a permanent injunction at the final hearing;

(2) the plaintiffs in the present applications had not satisfied this requirement for, apart from the merits, the learned Judge was satisfied that the powerful argument could be mounted at the final hearing, that their claims in the suits are barred by limitation – specifically, by section 2 of the Public Authorities Protection Act, 1948 and by accord and satisfaction;

(3) as the Court had no doubt as to the adequacy of the plaintiffs' remedy lying in damages should they succeed in their claims at the final hearing, there was no need for it to consider the further question of the balance of convenience but had it been necessary to do so, the Court was satisfied that the balance of convenience favoured the Urban Development Authority rather than the plaintiffs.

Cases referred to:

(1) *American Cyanamid* v. *Ethicon* [1975] A.C. 396.
(2) *London & Blackwall Railway Co.* v. *Cross* (1886) 31 Ch. D. 354, 369.
(3) *Smith & Ors.* v. *Inner London Education Authority* [1978] 1 All E.R. 411.
(4) *Rousse-Uclaf* v. *Seanlre & Co.* [1977] F.S.R. 125.

APPLICATIONS BY SUMMONS-IN-CHAMBERS.

Subash Chandran (*R. Rajasingam* with him) for the plaintiffs.

Bazain bin Idris (Deputy Public Prosecutor) for 1st & 2nd defendants.

John Heah Wee Theng for 3rd defendant.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: These were two separate applications by Summons-in-Chambers supported by affidavits for interlocutory injunctions against a Public Authority, restraining it or its servants or agents or otherwise howsoever from pulling down and demolishing certain premises known as 115-H and 117-L, Jalan Tengku, Penang, standing on Lots 305 and 306 section 1 Town of Jelutong, North East District, Penang, respectively.

The applications arose out of two civil suits being Nos. 1508 and 1509/85 in which the two plaintiffs are different but the three defendants are the same. In each application, the interlocutory injunction sought is only against the third defendant, the Urban Development Authority.

As common questions of law and fact were involved in both applications, for convenience and with the concurrence of counsel, they were both heard together.

In each suit, the plaintiff claims:

a) A Declaration that the acquisition of the land known as Lots 305, 306, 333 and 334 section 1 Town of Jelutong, North East District, Penang *vide* Gazette Notification No: 339 dated the 24th day of April 1980, made pursuant to an enquiry held on 22nd day of July 1980 and the 5th day of August 1980 be declared null and void and of no effect whatsoever for non-compliance with the provisions of the Land Acquisition Act, 1960;

b) A Declaration that the alienation of the said Lots to Urban Development Authority is ineffective, null and void and of no effect whatsoever;

c) A Declaration that the plaintiff is entitled to remain on the land until evicted according to due process of law.

d) An Injunction restraining Urban Development Authority by themselves or their servants or agents or otherwise howsoever from entering onto the said Lots and pulling down or demolishing the said premises;

e) Damages;

f) Costs.

At the conclusion of the arguments yesterday, I dismissed both the applications.

I would now state briefly my reasons for that decision as I gather there is some urgency about the matter.

In *American Cyanamid* v. *Ethicon*[1] – Lord Diplock, in enunciating the guidelines for the grant or refusal of interlocutory injunctions, concluded by saying that, "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."

One such special case concerns actions brought against a Public Authority.

It is settled law that a Public Authority – and the Urban Development Authority is such a body – should not be restrained by interlocutory injunction from exercising its statutory powers unless the plaintiff has shown a real prospect of success in his claim for a permanent injunction at the final hearing.

I do not consider that the plaintiffs in the present applications had satisfied this requirement for, apart from the merits, I was satisfied that a powerful argument could be mounted at the final hearing, that their claims in the suits are barred by limitation – specifically, by section 2 of the Public Authorities Protection Act, 1948, and by accord and satisfaction.

As to the defence of limitation, it could be strongly argued that the plaintiffs' cause of action (if any) arose when they first became aware of the events upon which their suits are based. This was in June 1982 when negotiations for settlement on an *ex-gratia* basis were held as between the occupiers including the plaintiffs and a representative of the Urban Development Authority (see Exts. Rs-4 annexed to Enclosure 9 in Civil Suit No. 1508/85 and Enclosure 7 in Civil Suit No. 1509/85). However, both the suits herein were instituted only on November 30, 1985 – that is to say, more than the period of three years prescribed by the statute.

As to the defence of accord and satisfaction, both the plaintiffs had affirmed in their affidavits in identical terms as follows:

"9. However the 3rd defendant approached me to negotiate the terms of compensation for delivery of vacant possession which are as follows:

a) Payment of $52,000/-;

b) Payment of $20,000 being part of the cost of building another house on another piece of land;

c) rental subsidy of $50/- a month for 3 years;

d) allocation of one unit of flat in the proposed development at a price to be determined later;

e) Delivery of vacant possession to be given after the completion of my new house upon Occupation Licence being given;

f) the 3rd defendant to obtain the said Occupation Licence for me.

10. I have accepted the said offers without prejudice and it was agreed that I will move to the new house as soon as the said house is completed and the Occupation Licence thereof is issued to me."

The plaintiffs admitted that they did receive a sum of $52,000/- from the Urban Development Authority, but only in partial settlement of their claims. But, according to the Urban Development Authority, this payment was intended to be in full and final settlement of all claims.

It would not be justified for me at the interlocutory stage to resolve this controversy upon a mere conflict of affidavits – it will have to await the final hearing.

Be that as it may, it could be strongly argued at the final hearing, that on the plaintiffs' own versions, there was a valid and binding compromise. If, that were so, then their claims for a permanent injunction at the final hearing would be barred by accord and satisfaction and their remedy would lie in an order for specific performance of the compromise.

I was therefore not satisfied that the plaintiffs had demonstrated, within the meaning of the *Cyanamid* case, so far as it applies to special cases, that they had a real prospect of success in their claims for a permanent injunction at the final hearing.

This brings me to the next ground on which I dismissed their applications.

"The very first principle of law," said Lindley L.J. in *London Blackwall Railway Co. Cross*,[2] –

". . . is that *prima facie* you do not obtain an injunction to restrain actionable rights in which damages are the proper remedy."

In the *Cyanamid* case, Lord Diplock made the same point at p. 408 B & C in the following terms:

"[T]he court should first consider whether, if the plaintiff were to succeed at the trial in establishing its right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendants continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages . . . would

be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage."

In these circumstances, as I had no doubt as to adequacy of the plaintiffs' remedy lying in damages should they succeed in their claims at the final hearing, there was no need for me to consider the further question of the balance of convenience (see the *Cyanamid* case at p. 408). But, had it been necessary to do so, then I was satisfied that the balance of convenience favoured the Urban Development Authority rather than the plaintiffs.

The evidence, relevant to this part of the case, is to be found in the following extracts from the two affidavits of Encik Safie bin Haji Abdul Rashid, being Enclosure 9 in Civil Suit No. 1508/85 and Enclosure 7 in Civil Suit No. 1509/85, in particular, paragraphs 32 and 33, respectively, which were identically worded and which read as follows:

"I humbly stress that more hardship would be suffered by the 3rd defendant if the plaintiff's premises are to remain for the following reasons:

a) the presence of the said premises has delayed the commencement of the said project since January 17, 1983 when the relevant plans were first approved.

b) the delay in the completion of the said project would also defeat the statutory objective of the 3rd defendant to provide cheap housing to the lower income group within the shortest time possible.

c) the 3rd defendant would be unable to take advantage of the relatively low costs of building materials and contract tenders. Any increase in the price of the aforesaid due to delay would be financially straining to the 3rd defendant who is not motivated by profits in its urban renewal projects.

d) the delay would also be detrimental to the other 16 occupiers who had been promised the purchase of flats, shophouses, upon the completion of the said project and who are now temporarily lodging in the said long houses in Sungei Ara."

In considering the question of the balance of convenience, I thought I was entitled to, and did take into consideration, the public interest since Urban Development Authority is a public authority: (see *Smith & Ors* v. *Inner London Education Authority*[3]). The wider public interest may, in some cases, as it does in my opinion in this case, prove to be of decisive importance. See for example, the case of *Rousse-Uclaf* v. *Seanlre & Co.*[4] where the plaintiffs had alleged that a drug marketed by the defendants infringed the plaintiffs' patent, the defendants argued successfully that the drug had life-saving qualities and it was greatly in the public interest not to restrain the sale of such a drug at the interlocutory stage.

In the result, I dismissed both the applications with costs.

Applications dismissed.

Solicitors: *Rajasingam & Co.; Farid Ariffin & Associates.*

ATIP BIN ALI v. JOSEPHINE DORIS NUNIS & ANOR.

[O.C.J. (Wan Yahya J.) February 13, 1986]

[Malacca – Civil Suit No. 425 of 1985]

Practice and Procedure – Libel – Right in personam – Whether representative action can be maintained by plaintiff – Application to strike out – No cause of action – R.H.C. 1980, O.18 r.19 & O.59 r.8.

Defamation – Libel – Right in personam – Whether representative action can be maintained – Close relationship.

Datuk Seri Abdul Rahim Tamby Cik, the Chief Minister of Malacca at all material times, was sued by a waitress, Josephine Doris Nunis, in Malacca High Court Civil Suit No. 297/85 ("original writ"). She is the first defendant in the present Civil Suit No. 425/85 filed by Atip bin Ali, while the second defendant is Mr. Karpal Singh, an advocate and solicitor, who filed the original writ on behalf of the first defendant. It was alleged in the original writ that the said Datuk Seri had befriended the first defendant and that he had showered gifts on her. She claimed that as a result of the asseveration of marriage made by this person, she had on various occasions rendered him sexual favours at several named places. She claimed that she had given up her job as waitress at his request and that as a result of his subsequent unreasonable conduct in breaking off their association she had suffered mental anguish and humiliation. On September 17, 1985, she finally discontinued the action before service of the writ could be effected on the said Datuk Seri.

In the present suit, the plaintiff claimed that the publication of the contents of this writ had jointly and severally depicted both U.M.N.O. members and the plaintiff as persons of immoral and un-Islamic principles and accordingly had brought them into hatred, ridicule, disrepute and public odium and contempt and subjected the plaintiff and U.M.N.O. members to low and lewd remarks from the public and members of opposition parties like the Democratic Action Party (D.A.P.) and Party Islam Malaysia (P.A.S.). The present application by Mr. Karpal Singh, the second defendant, is to set aside the libel suit against him.